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File No. O Sales of Goods 47

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Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinions under the Indian Sales of Goods Act 1930

P & E

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It appears clear from the Collector's letter dated the 27th June, 1947, at page 17 ante that he accepted the offer of Jethalal Ramlal and Sons Company for the sale of gram at Faizpur, Bhadgaon and Edlabad on 13-6-1947 and ordered the stock to be handed over to that Company on its paying the amounts offered. Accordingly the amounts it/ ~~paying~~ appears were paid. If so, the sale was complete and the Company is entitle to the delivery of goods. The fact that some persons later offerdd higher bids or that there were prospects of securing better price by auction would be no valid ground for refusing to complete the sale and deliver the goods to the Company. If Government goes ahead with the auction sales as proposed, Government would be liable to pay damages to Jethalal Ramlal and Sons Company.

Remembrancer of Legal Affairs.

U. R. to C.A.D., No. 7622
dated the 23rd July, 1947.

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Office of the P.L.A.

Re: Soft Coke Waggons despatched by Messrs, Jagvan Trambaklal and Co.

Sale of Goods Act, 1930

Under section 31 of the Indian Sale of Goods Act, 1930, it is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. Under section 33 delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorised to hold them on his behalf. Section 42 provides that the buyer is deemed to have accepted the goods when he intimated to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimiting to the seller that he has rejected them. In the present case five waggons of soft coke despatched by Messrs. Jagvan Trambaklal and Co. under instruction of the Dy. Coal Commissioner Calcutta were accepted by Government and notwithstanding the inferior quality of coal no objection was raised within reasonable time. It is therefore clear than goods have been accepted without protest. However under section 59(1) where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may —

(a) set up against the seller the breach of warranty in diminution or extinction of the price;
(b) or sue the seller for damages for breach of warranty.

Under section 16(2) where goods are bought by a description from a seller who deals in goods of that

description (where he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality; Provided that, if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought tohave revealed. Goods are of merchantable qualftywhen they are of such quality and in such condition that a reasonable man acting reasonably would after a full examination accept the goods in the circumstances of the case in performance of his offer to buy that article, whether he buys it for own use or to sell again. Theconditionas to merchabtability requires the goods to be reasonably fit to be sold as goods of the particular description (see Iyers Law of Contract p. 1040). The term quality of goods as defined in sec. 2(12) includes their state or condition. It is presume that in the present case it would not be difficult to prove that the soft coke despatched to Navsari in five waggons from Calcutta was of inferior quality and full of dust; that it was with great difficulty that Government was able to secure a purchaser at the rate of Rs. 7-8-0 per ton; and that this inferiority in quality was noticed immediately after the delivery. No reasonable purchaser would accept coke of such inferior quality, much less would Government do it when it imported coke to ease the coal situation and to help the consumers without any intention of making any profit. The five waggons of soft coke despatched by Messrs. Jagjivan Trembaklal And Co. from Calcutta would not thus be of merchantable quality and consequently t ere would be a breach of warranty. The fact that Govt. did not reject the goods on the ground of inferior quality would not come in the way of a claim for

reduction in the price of coke. Consequently, notwithstanding the acceptance of goods and unreasonable delay in intimating to the sellers about the inferior quality of coke it would be possible for Govt. to invoke the provisions of section 60(1) of the Indian Sale of Goods Act and ~~and~~ and for reduction in the price of coke on the assumption that there is enough evidence to prove the coke ~~dispatched~~ to Howrah in five wagons was of inferior quality and with great difficulty Government was able to dispose of it at a low rate of Rs. 7-8-0 per ton. In defending the suit Government may rely on the breach of warranty of quality in diminution of the price claimed by an amount which prima facie would correspond to the difference between the value of the coke at the time of delivery to Government, and the value they would have had if it answered to the warranty. Before doing so, Government however, would be well advised to verify the accuracy of the facts regarding the breach of warrer

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 10753

dated the 10th November, 1947.

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